IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1938 OF 2005

Mas Chrom India Pvt. Ltd. & Anr. ...Petitioners

Versus

State of Maharashtra & Anr ...Respondents

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Mr. Benny Joseph i/b M/s. Sanjay Udeshi & Co. Advocate for Petitioners

Mr. R.S.Khadapkar, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 22ND AUGUST, 2005

P. C.:-

1. Heard the learned advocate for the petitioners and the learned A.P.P. for the State.

2. The petitioners have prayed for quashing of process issued against them in Criminal Case No. 338/SS/2005 which is pending in the Court of learned Special Metropolitan Magistrate at Small Causes Court at Mumbai. In the said case, process has been issued against the petitioners under Section 138 r.w. Section 142 of Negotiable Instruments Act.

3. It may be stated here that the petitioners had preferred an application before the learned

Magistrate for recalling of process, the said application came to be rejected. In view of the decision of the Supreme Court in the Case of **Adalat Prasad Vs. Rooplal Jindal & Ors. reported in (2004) 7 SCC 338,** it is clear that the Magistrate does not have power to recall the process, hence, in this view of the matter, I am not inclined to interfere with the order of the learned Magistrate rejecting the application of the petitioners for recalling of process.

4. However, for the reasons recorded in my order dated 13th June, 2005 passed in Criminal Writ Petition No.213 of 2005 and order dated 21st June, 2005 passed in Criminal Application No.550 of 2005, the petitioners have an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my opinion, it would be appropriate that the petitioners prefer revision before the concerned Sessions Court against the order of the Magistrate issuing process.

5. Liberty is granted to the petitioners to prefer revision before the concerned Sessions Court. The learned advocate for the petitioners states that the necessary revision would be preferred within a period of four weeks from today. In view of this statement, the trial Court shall not proceed with the trial for

a period of four weeks from today. It is made clear that the revision shall be preferred in respect of the order of the learned Magistrate issuing process and not in respect of the order of the learned Magistrate rejecting the application for recalling of process.

6. The learned advocate for the petitioners has submitted that the petitioners have been granted bail on certain conditions and he has prayed that time to furnish sureties be extended by four weeks from today. Said prayer is granted

7. On the necessary revision being preferred by the petitioners before the concerned Sessions Court, the concerned Sessions Court shall dispose of the same on merits after hearing necessary parties.

8. Writ Petition is disposed of.

(SMT. V.K. TAHILRAMANI, J.)